

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

AUG 13 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Appellee,)	2 CA-CR 2006-0307
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
EMMANUEL ROBLES,)	Rule 111, Rules of
)	the Supreme Court
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20054643

Honorable Charles S. Sabalos, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Diane Leigh Hunt

Tucson
Attorneys for Appellee

Robert J. Hooker, Pima County Public Defender
By Scott A. Martin

Tucson
Attorneys for Appellant

E S P I N O S A, Judge.

¶1 Emmanuel Robles was convicted after a jury trial of one count of armed robbery, a class two felony; one count of theft of a means of transportation, a class three

felony; four counts of kidnapping, class two felonies; one count of possessing a firearm as a prohibited possessor, a class four felony; and four counts of aggravated assault. Three of the four aggravated assault charges were class three felonies, but one victim, A., was a minor under the age of fifteen. As a result, that assault was a dangerous crime against children and a class two felony pursuant to A.R.S. § 13-604.01(N)(1), (2). Robles was sentenced to a combination of concurrent and consecutive prison terms totaling twenty years. He appeals only his conviction and sentence for the aggravated assault of A. We affirm.

¶2 In November 2005, Robles approached four people in an apartment parking lot. Armed with a gun, he demanded their possessions and stole the vehicle around which the victims, including eleven-year-old A., were congregated. During the course of the robbery, he threatened all of the victims with the gun and pointed the weapon at A.

¶3 Robles argues he was improperly convicted of a dangerous crime against a child because A. had been merely an incidental member of the group “against” whom his criminal conduct was focused. As defined by A.R.S. § 13-604.01, a dangerous crime against children is one of the offenses enumerated in the statute “that is committed against a minor who is under fifteen years of age.” We review the interpretation of a statute *de novo*. *State v. Getz*, 189 Ariz. 561, 563, 944 P.2d 503, 505 (1997).

¶4 Our supreme court articulated the scope of the dangerous crimes against children statute in *State v. Sepahi*, 206 Ariz. 321, ¶ 19, 78 P.3d 732, 735 (2003). “[T]o prove that a defendant has committed a dangerous crime against a child, the State must prove that

the defendant committed one of the statutorily enumerated crimes and that his conduct was focused on, directed against, aimed at, or targeted a victim under the age of fifteen.” *Id.*

¶5 Robles’s assault of A. meets both of *Sepahi*’s requirements. *See id.* “Aggravated assault resulting in serious physical injury or involving the use or threatening exhibition of a deadly weapon or dangerous instrument” against a child under the age of fifteen is a dangerous crime against a child. *See* § 13-604.01(N)(1)(b). While “something more” than the age of the victim might be required by the statute, *see State v. Williams*, 175 Ariz. 98, 102, 854 P.2d 131, 135 (1993), the state need not prove, as Robles argues, that he poses a particular threat to Arizona’s children or that assaulting A. was the objective of his criminal activities. *See Sepahi*, 206 Ariz. 321, ¶¶ 15, 17-18, 78 P.3d at 735. Rather, the state was only required to show that, when Robles threatened A. with the gun, he intended to threaten A. specifically and not someone else. *See id.*; *Williams*, 175 Ariz. at 101, 854 P.2d at 134.

¶6 We find unpersuasive Robles’s attempt to distinguish this case as one in which he did not target A., but rather “fortuitously [injured him by his] unfocused conduct.” *See Williams*, 175 Ariz. at 103, 854 P.2d at 136. If a defendant does not target a child but a child is injured anyway, he has not committed a dangerous crime against a child. *Id.* Here, however, even if Robles did not target A. originally in his overarching criminal plan to rob bystanders and steal a vehicle, there was nothing fortuitous or unfocused about his pointing a gun at the eleven-year-old child when he pointed it at each member of the group in turn.

In so doing, he directed his conduct at a child under the age of fifteen. *Sepahi*, 206 Ariz. 321, ¶ 19, 78 P.3d at 735.

¶7 For the foregoing reasons, Robles's conviction and sentence are affirmed.

In view of our affirmance, we do not address Robles's argument that the consecutive nature of his sentences should be reconsidered.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge